



## 2023 SENATE BILL 40

February 3, 2023 - Introduced by Senators FEYEN and QUINN, cosponsored by Representatives ARMSTRONG, KURTZ, ALLEN, DITTRICH, EDMING, GREEN, KITCHENS, MAGNAFICI, MURPHY, MURSAU, NOVAK, SNYDER, SPIROS, TUSLER and VANDERMEER. Referred to Committee on Housing, Rural Issues and Forestry.

1     **AN ACT to renumber** 76.639 (3); **to amend** 71.07 (8b) (e), 71.28 (8b) (e), 71.47 (8b)  
2           (e), 76.639 (5), 76.67 (2), 234.45 (1) (e) and 234.45 (4); and **to create** 76.639 (3)  
3           (b), 234.45 (1) (em) and 234.45 (5m) of the statutes; **relating to:** changes to the  
4           low-income housing tax credit.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the Wisconsin Housing and Economic Development Authority administers a low-income housing tax credit program. Under that program, a person may claim as a credit against the person's income or franchise tax liability, or against the person's liability for fees imposed on an insurer, the amount allocated by WHEDA in an "allocation certificate" for a qualified low-income housing project. The annual amount of tax credits WHEDA certifies under the program may not exceed \$42,000,000. The bill increases that annual cap to \$100,000,000.

The bill also requires that WHEDA, if possible, ensure that at least 35 percent of the tax credits it allocates each year under the program are for qualified low-income housing projects in rural areas in Wisconsin and removes the requirement that a qualified low-income housing project be financed with tax-exempt bonds.

Finally, the bill makes a technical change to the credit for insurers so that an insurer who is a shareholder of a tax-option corporation, a partner of a partnership, or a member of a limited liability company may claim the credit.

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For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 71.07 (8b) (e) of the statutes is amended to read:

2           71.07 **(8b)** (e) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the  
3 credit under s. 71.28 (4), applies to the credit under this subsection. In addition, if  
4 a credit computed under this subsection is not entirely offset against Wisconsin  
5 income or franchise taxes otherwise due, the unused balance may be carried back  
6 and credited against Wisconsin income or franchise taxes otherwise due for the  
7 previous taxable year.

8           **SECTION 2.** 71.28 (8b) (e) of the statutes is amended to read:

9           71.28 **(8b)** (e) *Administration.* Subsection (4) (e) to (h), as it applies to the credit  
10 under sub. (4), applies to the credit under this subsection. In addition, if a credit  
11 computed under this subsection is not entirely offset against Wisconsin income or  
12 franchise taxes otherwise due, the unused balance may be carried back and credited  
13 against Wisconsin income or franchise taxes otherwise due for the previous taxable  
14 year.

15           **SECTION 3.** 71.47 (8b) (e) of the statutes is amended to read:

16           71.47 **(8b)** (e) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the  
17 credit under s. 71.28 (4), applies to the credit under this subsection. In addition, if  
18 a credit computed under this subsection is not entirely offset against Wisconsin  
19 income or franchise taxes otherwise due, the unused balance may be carried back  
20 and credited against Wisconsin income or franchise taxes otherwise due for the  
21 previous taxable year.

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1           **SECTION 4.** 76.639 (3) of the statutes is renumbered 76.639 (3) (a).

2           **SECTION 5.** 76.639 (3) (b) of the statutes is created to read:

3           76.639 (3) (b) A partnership, limited liability company, or tax-option  
4 corporation may not claim the credit under this section. An insurer, if a partner of  
5 a partnership, member of a limited liability company, or shareholder in a tax-option  
6 corporation, may claim the credit under this section based on eligible costs incurred  
7 by the partnership, limited liability company, or tax-option corporation. The  
8 partnership, limited liability company, or tax-option corporation shall calculate the  
9 amount of the credit that may be claimed by the insurer as a partner, member, or  
10 shareholder and shall provide that information to the insurer. If an insurer is a  
11 shareholder of a tax-option corporation, the credit may be allocated in proportion to  
12 its ownership interest as a shareholder. If an insurer is a partner of a partnership  
13 or member of a limited liability company, credits may be claimed in proportion to the  
14 insurer's ownership interest or allocated to the insurer as provided in a written  
15 agreement among the partners or members that is entered into no later than the last  
16 day of the taxable year of the partnership or limited liability company for which the  
17 credit is claimed. Any insurer who claims the credit as allocated by a written  
18 agreement shall provide a copy of the agreement with the tax return on which the  
19 credit is claimed.

20           **SECTION 6.** 76.639 (5) of the statutes is amended to read:

21           76.639 (5) ~~CARRY-FORWARD; CARRY-BACK~~. If the credit under sub. (2) is not  
22 entirely offset against the fees under s. 76.60, 76.63, 76.65, 76.66, or 76.67 otherwise  
23 due, the unused balance may be carried forward and credited against those fees for  
24 the following 15 years to the extent that it is not offset by those fees otherwise due  
25 in all the years between the year in which the expense was made and the year in

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1 which the carry-forward credit is claimed. In addition, if a credit computed under  
2 sub. (2) is not entirely offset against the fees under s. 76.60, 76.63, 76.65, 76.66, or  
3 76.67 otherwise due, the unused balance may be carried back and credited against  
4 the fees under s. 76.60, 76.63, 76.65, 76.66, or 76.67 otherwise due for the previous  
5 taxable year.

6 **SECTION 7.** 76.67 (2) of the statutes is amended to read:

7 76.67 (2) If any domestic insurer is licensed to transact insurance business in  
8 another state, this state may not require similar insurers domiciled in that other  
9 state to pay taxes greater in the aggregate than the aggregate amount of taxes that  
10 a domestic insurer is required to pay to that other state for the same year less the  
11 credits under ss. 76.635, 76.636, 76.637, 76.638, 76.639, and 76.655, except that the  
12 amount imposed shall not be less than the total of the amounts due under ss. 76.65  
13 (2) and 601.93 and, if the insurer is subject to s. 76.60, 0.375 percent of its gross  
14 premiums, as calculated under s. 76.62, less offsets allowed under s. 646.51 (7) or  
15 under ss. 76.635, 76.636, 76.637, 76.638, 76.639, and 76.655 against that total, and  
16 except that the amount imposed shall not be less than the amount due under s.  
17 601.93.

18 **SECTION 8.** 234.45 (1) (e) of the statutes is amended to read:

19 234.45 (1) (e) “Qualified development” means a qualified low-income housing  
20 project under section 42 (g) of the Internal Revenue Code that is ~~financed with~~  
21 ~~tax-exempt bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and~~  
22 located in this state.

23 **SECTION 9.** 234.45 (1) (em) of the statutes is created to read:

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1           234.45 (1) (em) "Rural area" means a city, village, or town in this state that has  
2 a population of fewer than 10,000 and that is at least 25 miles from any city, village,  
3 or town that has a population of at least 50,000.

4           **SECTION 10.** 234.45 (4) of the statutes is amended to read:

5           234.45 (4) ALLOCATION LIMITS. In any calendar year, the aggregate amount of  
6 all state tax credits for which the authority certifies persons in allocation certificates  
7 issued under sub. (3) in that year may not exceed ~~\$42,000,000~~ \$100,000,000,  
8 including all amounts each person is eligible to claim for each year of the credit  
9 period, plus the total amount of all unallocated state tax credits from previous  
10 calendar years and plus the total amount of all previously allocated state tax credits  
11 that have been revoked or cancelled or otherwise recovered by the authority.

12           **SECTION 11.** 234.45 (5m) of the statutes is created to read:

13           234.45 (5m) PREFERENCE FOR RURAL COMMUNITIES. (a) Beginning on January  
14 1, 2024, in approving applications for allocation certificates under sub. (3), the  
15 authority shall ensure that at least 35 percent of the value of all state tax credits the  
16 authority allocates each year are for qualified developments located in rural areas.

17           (b) Paragraph (a) does not apply in any year in which the authority cannot  
18 satisfy the 35 percent allocation threshold because the authority does not receive a  
19 sufficient number of applications for allocation certificates for qualified  
20 developments located in rural areas that the authority determines are complete and  
21 financially prudent.

22           **(END)**